

The Honorable Marsha J. Pechman

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

BRANDON TOLE, an individual,  
  
Plaintiffs,  
  
vs.  
  
AMAZON.COM SERVICES LLC; a  
Delaware Limited Liability Company;  
  
Defendant.

**CASE NO. 2:22-CV-00594-MJP**

**PLAINTIFF TOLE’S REPLY BRIEF TO  
AMAZON’S OPPOSITION TO HIS  
MOTION FOR LEAVE TO FILE THE  
CONFIDENTIAL SETTLEMENT  
AGREEMENT UNDER SEAL AND FOR  
LEAVE TO FILE SUPPLEMENTAL  
BRIEF IN RESPONSE TO THE  
COURT’S ORDER ON JOINT MOTION  
TO APPROVE CONSENT DECREE  
[DKT. 163]**

NOTE ON MOTION CALENDAR:  
FRIDAY, FEBRUARY 21, 2025

In its Opposition to Plaintiff Brandon Tole’s Motion for Leave to File the Confidential Settlement Agreement Under Seal (hereafter “Motion”), Amazon spins a hollow tale about Plaintiff attempting to “circumvent the mutually agreed-upon confidentiality provision” in the Parties’ settlement agreement. Dkt. 168, p.1. Amazon also claims the Motion should be denied as moot because this Court’s Order on Plaintiff’s Motion for Attorneys’ Fees and Costs (hereafter “Order”) has already been decided. *Id.*

In fact, the Order specifically referenced the settlement agreement on four occasions in

1 holding the Court could not determine whether Plaintiff was the prevailing party and what  
 2 benefit(s) his counsel was able obtain for him, if any:

- 3 • Although the Court has approved a consent decree, it has not been  
 4 provided with the terms of the **settlement agreement** or any basis on  
 5 which to determine whether and to what extent Plaintiff has “prevail[ed]”  
 6 on his USERRA claims;
- 7 • This puts this matter on different footing from Maher, where the district  
 8 court knew that the **settlement agreement** afforded plaintiff a substantial  
 9 benefit. 448 U.S. at 125, 129-30 (noting that the district court made a  
 10 finding the plaintiff was the prevailing party and that she had a  
 11 “substantial increase” in benefits);
- 12 • But without knowing the terms of the **settlement agreement**, the Court  
 13 has not and cannot make any determination whether Plaintiff prevailed.  
 And Amazon contests this point. As such, the Court cannot and does not  
 find Plaintiff to be a prevailing party entitled to fees under USERRA; and,
- 14 • In total, the Court finds an award of \$239,030.00 is a reasonable sum to  
 be awarded as attorneys’ fees in light of the skill, experience, and  
 reputation of counsel, the limited success Tole achieved, and the absence  
 of any information as to the **settlement agreement** and what benefit was  
 conferred.

15 Dkt. 167, p.9: 4-16; p.18: 14-17 (emphasis added) (internal citations omitted).

16 Before ruling on the Motion for Attorneys’ Fees and Costs, the Court made repeated  
 17 reference to the settlement agreement in its Order granting the Parties’ Joint Stipulated Motion for  
 Entry of Consent Decree, in which it struck paragraph 7(c) from the Consent Decree, and held:

18 The Parties have not provided the Court with a copy of the settlement agreement,  
 19 and, as such, the Court is without any means of determining what relief may or may  
 not have been accorded to Plaintiff and whether and how that is consistent with  
 USERRA.

20 Dkt. 163, p.2:1-13.

21 Moreover, the Court indicated that it “remains open to further consideration of these  
 22 proposed findings, but the Parties must provide sufficient information and explanation as to why  
 23 such findings are proper.” Dkt. 163, p 2:11-13. This was exactly the purpose of Plaintiff’s Motion.

24 In short, this Court has indicated that it needs to see the settlement agreement, without  
 25 which it could not make certain important rulings. And despite Amazon’s baseless contention to  
 26 the contrary, nothing about Plaintiff’s Motion for Leave violates the confidentiality provision of  
 27 the settlement agreement. Plaintiff’s Motion has been filed to provide the Court with full

1 transparency of the specific settlement terms, such that the Court has adequate information  
 2 available to reach the parties' requested findings and rulings regarding the Consent Decree and  
 3 Fee Motion, respectively.

4 Amazon clearly does not want this Court to see the settlement agreement because it knows  
 5 what relief Plaintiff obtained, it knows how significant that relief was (that statement does not  
 6 violate any provision of the settlement agreement either), and it knows the Court may very well,  
 7 and in Plaintiff's opinion should, reconsider both the Order on Joint Motion to Approve Consent  
 8 Decree [Dkt. 163], and the Order on Plaintiff's Motion for Attorneys' Fees [Dkt. 167].

9 For the reasons set forth herein, and in his Motion, Plaintiff respectfully requests this Court  
 10 order Plaintiff to file the Confidential Settlement Agreement under seal within three (3) days of  
 11 entry of an Order Granting this Motion to File Under Seal.

12 DATED: February 21, 2025

13 /s/ Brian J. Lawler

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**CERTIFICATE OF SERVICE**

I certify that on February 21, 2025, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send a notification of the filing to all registered users of the CM/ECF system.

Dated: February 21, 2025

s/ Brian J. Lawler  
Brian J. Lawler